

Case Properly Dismissed for Failure to Join Real Party in Interest Even Though Agency Did Not Provide Plaintiff with Corrected Notice of Determination

The court of appeal affirmed the trial court judgment dismissing the plaintiff's CEQA action on grounds that the plaintiff failed to join an indispensable real party in interest within thirty days after the city filed a revised notice of determination to correct an earlier notice of determination which misidentified the project applicant -- even though the plaintiff was not notified the notice had been corrected. *Organizacion Comunidad de Alviso v. City*



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on the first notice of determination, the plaintiff filed a petition for writ of mandate within 30 days after the notice was filed. That petition named the party identified as the project applicant in the notice as the real party in interest. Sometime later the plaintiff learned that a second notice of determination had been filed and filed an amended petition that correctly named Microsoft as the real party in interest. That petition, however, was filed more than 30 days after the city filed the second, corrected notice of determination. The court of appeal affirmed the trial court judgment dismissing the case on the ground that the initial petition was defective for failing to join Microsoft, an indispensable party, as the real party in interest, and that the amended petition was untimely

because it was filed more than 30 days after the second notice of determination. The court agreed that the city violated CEQA by failing to send the second notice to the plaintiff. But the court concluded the violation did not excuse the plaintiff's failure to file the amended petition within the 30-day limitations period that was triggered by the corrected notice because the statute that requires a public agency to send a copy of a notice of determination to any person who has submitted a written request for one specifically provides that the date the notice is mailed to the requesting party "shall not" affect the statute of limitations for filing a CEQA action. While the court expressed sympathy for the plaintiff, it determined that the trial court properly applied well-established principles that the filing of a valid notice of determination triggers the statute of limitations for a CEQA challenge. Actual notice is not required and the posting of a notice of determination is deemed sufficient to provide constructive notice to all potential litigants, even if it is a notice that has been revised to identify the right party.

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